Supreme Court, U.S.
FILED

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No. 94 442 SEP 12 1994

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

IN RE: BOSTON POST ROAD LIMITED PARTNERSHIP,
Debtor,

BOSTON POST ROAD LIMITED PARTNERSHIP,
Petitioner,

vs.

FEDERAL DEPOSIT INSURANCE CORPORATION,
Respondent,

EVERGREEN LANDSCAPE; BOYER REALTY MGMT; FLANAGAN ASSOC. APPRAISERS; TINNERELLO RUBBISH REMOVAL; GOTTESDIENER ACCOUNTING; and WATER POLLUTION CONTROL, TOWN OF WATERFORD,
Creditors,

HONOR S. HEATH,
Trustee

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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39 pp

QUESTIONS PRESENTED

1. IN A SINGLE-ASSET CHAPTER 11 CASE, IS THE CLASSIFICATION OF AN UNDERSECURED CREDITOR'S UNSECURED DEFICIENCY CLAIM SEPARATE FROM UNSECURED CLAIMS OF TRADE CREDITORS PROPER UNDER 11 U.S.C. § 1122 OR SHOULD SUCH CLASSIFICATION BE MADE ONLY FOR A GOOD AND COMPELLING BUSINESS REASON?

2. DOES AN IMPAIRED CLASS, AS THAT TERM IS DEFINED UNDER 11 U.S.C. § 1124, INCLUDE A CLASS OF CREDITORS WHOSE INTEREST IS ENHANCED OR ALTERED IN A MANNER WHICH INCREASES THE RIGHTS OF THAT CLASS?

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OPINIONS BELOW

The opinion of the Second Circuit Court of Appeals is reported at 21 F.3d 477 (2d Cir. 1994) and appears in Appendix (Appx.) at 36-64. The denial of petition for rehearing in the Second Circuit Court of Appeals is unreported and appears in Appx. at 101-02, 103-04.

The opinion of the United States District Court for the District of Connecticut is reported at 154 B.R. 617 (1993) and appears in Appx. at 17-35.

The opinion of the Bankruptcy Court is reported at 145 B.R. 745 (1992) and appears in Appx. at 1-16.

JURISDICTION

The judgment of the Court of Appeals was entered on March 30, 1994. A petition for rehearing was denied on June 14, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) which appears in Appx. at 140.

STATUTORY PROVISIONS

This case involves the following statutes which are set forth in full in the Appendix to this petition:

Statutory Provision	*Appendix*
28 U.S.C. § 1254	140
11 U.S.C. § 1111	141-42
11 U.S.C. § 1122	143
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11 U.S.C. § 1124	148-49
11 U.S.C. § 1126	150-51
11 U.S.C. § 1129	152-57

STATEMENT OF THE CASE

This appeal involves basically two parties: a debtor whose only significant asset is an office complex in Waterford, Connecticut and a lender who possesses a multi-million dollar lien on that property.

The Petitioner, Boston Post Road Limited Partnership, is a limited partnership formed pursuant to the Connecticut Uniform Limited Partnership Act, Connecticut General Statutes § 34-9 *et seq.* (ULPA) and consisting of a single individual general partner, George Boyer of Stonington, Connecticut and a single limited partner, George Myers of Mystic, Connecticut. Both the general and limited partners are full-time real estate professionals. Boston Post Road was formed on September 19, 1984 for the sole purpose of acquiring, owning and managing a single real estate project located at 161 Boston Post Road in Waterford,

Connecticut.

In March of 1988, some four years after the acquisition of the property, Boston Post Road refinanced its mortgage with then-Connecticut Bank & Trust Company, N.A. (CBT). That mortgage was in the original principal amount of $1,600,000 and carried an interest rate of "Prime Rate" plus ¾%, adjustable on an immediate change date basis. The original monthly mortgage payments of interest and principal were set at $13,653. This equated to an annual cash payment from the project of $163,836 to service the mortgage debt. The net income from the project, at least at that time, was sufficient to carry the debt service with a small equity cushion.

Subsequently, the prime rate as set by CBT began to escalate and within a short period of time it reached 12¼

percent. Shortly thereafter, the net income from the project became insufficient to meet the annual debt service which increased almost $40,000 per year to $203,556. This change in debt service amounted to roughly a 20 percent increase in less than one year.

As the net income from the project became insufficient to fund this increase in added expense in a relatively short period of time, the partners subsidized the mortgage payments from their own funds. Additionally, during this period, Boston Post Road attempted to obtain relief from CBT by way of interest reductions and principal deferral. CBT refused any relief and soon the mortgage payments fell behind by one month. When the real estate market collapsed in 1990, the mortgage payments fell three months behind. CBT then commenced foreclosure

proceedings.

During the foreclosure, a receiver of rents took over the control and management of the property for approximately one year. In January of 1991, the Comptroller of Currency of the United States declared CBT to be insolvent and appointed the Federal Deposit Insurance Corporation (FDIC) as the receiver for CBT. Immediately upon accepting its appointment as receiver, the FDIC continued to press the then-pending foreclosure action. Boston Post Road, in response to the FDIC's efforts to complete its foreclosure, prepared and filed a *pro se* petition for relief under Chapter 11 of the Bankruptcy Code.

On August 12, 1992, a hearing was held to confirm Boston Post Road's Second Amended Plan of Reorganization which proposed a "cramdown" seeking to

retain possession and full ownership of the property and to force a write-down of the obligation owed to the FDIC. *See* Appx. at 105-39.

Boston Post Road's plan included three separate classes of unsecured claims, one of which was represented by the FDIC deficiency claim which consisted of the unsecured portion of its lien against Boston Post Road's property. The other two classes represented unsecured trade creditor interests and unsecured creditors consisting of tenants whom Boston Post Road contended were likewise impaired under the plan.

Prior to the hearing to confirm the plan, the FDIC did not make the 1111(b) election and instead filed various objections to the Plan, including that the separate classification of its unsecured deficiency claim from

unsecured trade creditors was *patently* improper and also that the class of tenants was not impaired and therefore could not vote on the plan.

The case was initially brought in Federal Bankruptcy Court pursuant to jurisdiction granted to the court by 28 U.S.C. § 157(b)(1). On October 2, 1992, the Bankruptcy Court entered a final order denying the confirmation of Boston Post Road's Second Amended Plan of Reorganization. *See* Appx. at 1-16. The basis of the order of the Bankruptcy Court centered primarily around the plan's proposed separate classification of the FDIC deficiency claim from those of trade creditors. On October 9, 1992, Boston Post Road filed its notice of appeal from that decision to the United States District Court for the District of Connecticut.

On June 21, 1993, District Court Judge Alan H. Nevas issued a memorandum of decision affirming the decision of the Bankruptcy Court in denying confirmation of Boston Post Road's Second Amended Plan of Reorganization (Memorandum of Decision) and on June 23, 1993 judgment entered against Boston Post Road affirming the order of the Bankruptcy Court. *See* Appx at 17-35. On August 18, 1993, Boston Post Road gave notice of its appeal to the United States Court of Appeals for the Second Circuit from the June 23, 1993 judgment of the District Court affirming the decision of the United States Bankruptcy Court, which judgment acted as a final judgment for purposes of appellate jurisdiction to the Court

of Appeals.[1]

On March 30, 1994 the United States Court of Appeals for the Second Circuit affirmed the decision of the District Court. Boston Post Road petitioned the United States Court of Appeals for the Second Circuit for rehearing and further suggested to the Court that the action be reheard

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[1] *See, e.g., In re Mason*, 709 F.2d 1313 (9th Cir. 1983); *see also In re Blankemeyer*, 861 F.2d 191, 193 (8th Cir. 1988); *In re Pine Assoc., Inc.*, 733 F.2d 208 (2d Cir. 1984); *Penn Terra, Ltd. v. Department of Env. Resources*, 733 F.2d 267 (3d Cir. 1984); *In re Leimer*, 724 F.2d 744 (8th Cir. 1984) (applying the pragmatic test of finality for purposes of appeal of right to the District Court); *In re American Mariner Indus., Inc.*, 734 F.2d 426 (9th Cir. 1984); *In re White*, 727 F.2d 884 (9th Cir. 1984) (applying a "need-for-immediate-review" test); *In re Comer*, 716 F.2d 168 (3d Cir. 1983); *Borg-Warner Acceptance Corp. v. Hall*, 685 F.2d 1306 (11th Cir. 1982); *In re Taddeo*, 685 F.2d 24 (2d Cir. 1982); *John T. Mather Memorial Hospital of Port Jefferson, Inc. v. Pearl*, 723 F.2d 193, 194 n.1 (2d Cir. 1983).

en banc. On June 14, 1994 the United States Court of Appeals for the Second Circuit denied Boston Post Road's motion for rehearing. *See* Appx. at 101-02, 103-04. On August 15, 1994 Boston Post Road petitioned the United States Court of Appeals for the Second Circuit for a stay pending this petition for Certiorari. Boston Post Road now seeks this Supreme Court to issue a writ of certiorari to the United States Court of Appeals for the Second Circuit.

REASONS FOR GRANTING THE WRIT

IN LIGHT OF A CLEAR CONFLICT OF AUTHORITY BETWEEN THE CIRCUIT COURTS, THIS COURT SHOULD DETERMINE WHETHER IN A SINGLE-ASSET CHAPTER 11 CASE, THE CLASSIFICATION OF AN UNDERSECURED CREDITOR'S UNSECURED DEFICIENCY CLAIM SEPARATE FROM UNSECURED CLAIMS OF TRADE CREDITORS IS PROPER UNDER 11 U.S.C. SECTION 1122.

The issue raised in this appeal is the subject of a jurisdictional split between the Circuit Courts. The Supreme Court could resolve this disparity by granting this petition for Writ of Certiorari. The question was presented to the United States Court of Appeals for the Second Circuit as one of first impression which that Court recognized as a "'hot topic' among practitioners and in the academic community," *see In re Boston Post Road Limited Partnership*, 21 F.3d 477, 481 (2d Cir 1994) (Appx. at 36-

64).

The decision of the Second Circuit explicitly relied on the Fifth Circuit's decision on the same issue in *In Re Greystone III, Joint Venture*, 995 F.2d 1274 (5th Cir. 1991), *cert. denied*, ___ U.S. ___, 113 S.Ct. 72, 121 L.Ed.2d 37 (1992), which the Second Circuit Court found to be the "preeminent case on the question." *In Re Boston Post Road*, 21 F.3d at 482.

The Court of Appeals, Milton Pollack, Senior District Judge, sitting by designation, held that: (1) separate classification of unsecured claims solely to create impaired assenting class for purposes of cramdown will not be permitted, and debtor must instead adduce credible proof of legitimate reason for separate classification of similar claims; (2) different origins of Federal Deposit Insurance

Corporation's (FDIC's) unsecured deficiency claim and general unsecured claims of trade creditors did not alone justify separate segregation; (3) that the debtor failed to present any evidence of legitimate business reason for separate classification of similarly situated unsecured creditor claimants for purposes of cramdown; and (4) that residential tenants of debtor whose security deposits debtor was holding under continued leases were administrative claimants not entitled to vote on plan of reorganization.

The reasoning of the Second Circuit court was predicated in the other circuits having generally held that separate classification of similar claims is permissible only upon proof of a legitimate reason for separate classification, and that separate classification to gerrymander an affirmative vote is impermissible. *See, e.g., Greystone III,*

995 F.2d at 1279. ("[T]hou shalt not classify similar claims differently in order to gerrymander an affirmative vote on a reorganization plan.")

The Second Circuit noted:

> All the circuit courts that have heretofore visited the question of when similar claims may be classified separately have held that similar claims may not be separately classified solely to engineer an assenting impaired class: [I]f § 1122(a) permits classification of "substantially similar" claims in different classes, such classification may only be undertaken for reasons independent of the debtor's motivation to secure the vote of an impaired, assenting class of claims. *Greystone III*, 995 F.2d 1274, 1279 (5th Cir. 1991), *cert. denied*, __ U.S. __, 113 S.Ct. 72, 121 L.Ed. 2d 37 (1992); [A]lthough separate classification of similar claims may not be prohibited, it "may only be undertaken for reasons independent of the debtor's motivation to secure the vote of an impaired, assenting class of claims." *Travelers Ins. Co. v. Bryson Properties, XVIII* (*In re Bryson Properties, XVIII*), 961 F.2d 496, 502 (4th Cir.) (*quoting Greystone III*, 995 F.2d at 1279), *cert. denied*, __ U.S. __, 113 S.Ct. 191, 121 L.Ed.2d 134 (1992); [I]f the classifications are designed to manipulate class voting . . . , the plan cannot be

confirmed. *Olympia & York Florida Equity Corp. v. Bank of New York* (*In re Holywell Corp.*), 913 F.2d 873, 880 (11th Cir. 1990); The debtor's discretion to place similar claims in different classes is not unlimited, however. Classifications designed to manipulate class voting must be carefully scrutinized. There is potential for abuse when the debtor has the power to classify creditors in a manner to assure that at least one class of impaired creditors will vote for the plan, thereby making it eligible for the cram down provisions. *Hanson v. First Bank of South Dakota, N.A.*, 828 F.2d 1310, 1313 (8th Cir. 1987); Unless there is some requirement of keeping similar claims together, nothing would stand in the way of a debtor seeking out a few impaired creditors (or even one such creditor) who will vote for the plan and placing them in their own class. *Teamsters Nat'l Freight Industry Negotiating Comm. v. U.S. Truck Co.* (*In re U.S. Truck Co.*), 800 F.2d 581, 586 (6th Cir. 1986). Indeed, some courts have gone even further, holding that a plan must classify all substantially similar claims together, regardless of the debtor's intent. *See Granada Wines, Inc. v. New England Teamsters and Trucking Indus. Pension Fund*, 748 F.2d 42, 46 (1st Cir. 1984).

The Second Circuit also held that a reading of Section 1122 in the context of the rest of the Code suggests

that discretionary separate classification of similar claims would undermine the Section 1111(b) election:

> As explained above, Section 1111(b) of the Bankruptcy Code permits an undersecured creditor to choose whether (i) its claim should be divided into a secured claim equal to the court-determined value of the collateral and an unsecured claim for the deficiency, or (ii) its entire claim should be considered secured. The purpose of the Section 1111(b) election is to allow the undersecured creditor to weigh in its vote with the votes of the other unsecured creditors. Allowing the unsecured trade creditors to constitute their own class would effectively nullify the option that Congress provided to undersecured creditors to vote their deficiency as unsecured debt.
>
> Finally, approving a plan that aims to disenfranchise the overwhelmingly largest creditor through artificial classification is simply inconsistent with the principles underlying the Bankruptcy Code. A key premise of the Code is that creditors holding greater debt should have a comparably greater voice in reorganization. Thus, although Debtor protests that prohibiting it from separating the unsecured claims of the FDIC from those of its trade creditors will effectively bar single asset debtors from utilizing the Code's cramdown provisions, Debtor fails to

> persuade that a single-asset debtor should be able to cramdown a plan that is designed to disadvantage its overwhelmingly largest creditor. Chapter 11 is far better served by allowing those creditors with the largest unsecured claims to have a significant degree of input and participation in the reorganization process, since they stand to gain or lose the most from the reorganization of the debtor. This Court thus holds that separate classification of unsecured claims solely to create an impaired assenting class will not be permitted; the debtor must adduce credible proof of a legitimate reason for separate classification of similar claims.

During the appeal, Boston Post Road urged the Second Circuit court to adopt the reasoning of *In re D & W Realty Corp.*, 156 B.R. 140, 141 & n.3 (Bankr. S.D.N.Y. 1993), *rev'd*, 165 B.R. 127 (S.D.N.Y. 1994) (holding that "separate classification is not only appropriate, it is in fact mandated by the Bankruptcy Code and Rules") and *In re SM 104, Ltd.*, 160 B.R. 202, 218-19 (Bankr. S.D.Fla. 1993) (holding that unsecured deficiency claims created by §

1111(b) are not substantially similar to other unsecured claims, while asserting that the "circuit courts and the majority of district and bankruptcy courts have missed the forests for the trees").

Both of these decisions found separate classification to be not only permissible under the Code, but mandatory. The Second Circuit dismissed the reasoning of these two cases by citing that no Circuit court had adopted a similar reading of the Code. *In re Boston Post Road*, 21 F.3d at 482.

Significantly, during the pendency of the decision by the Second Circuit Court of Appeals, the Seventh Circuit on March 18, 1994 did that which the Second Circuit noted had not been done. In *In re Woodbrook Assoc.*, 19 F.3d 312 (7th Cir. 1994) (affirming decision of lower court on other

grounds), the United States Court of Appeals for the Seventh Circuit rendered a decision rejecting the reasoning of the Fifth Circuit in *Greystone*. A copy of the Seventh Circuit decision is found in Appx. at 65-100. The Seventh Circuit's decision in *Woodbrook*, which is in direct conflict with the Fifth Circuit's prior ruling on the same issue in *Greystone*, and which is likewise in direct conflict with that issued by the Second Circuit in this matter, held separate classification to be mandatory under the Code. *In re Woodbrook Assoc.*, 19 F.3d 312, 319 (7th Cir. 1994).

In *Woodbrook*, the Seventh Circuit recognized that the "one clear rule" engendered by *Greystone* was not an easy one to apply

> since it is not about "classifying similar claims"; it is about the debtor's purpose. Similarity is not a precise relationship, and the elements by which we judge similarity or

> resemblance shifts from time to time in bankruptcy.

In re Woodbrook, 19 F.3d at 318. The Court continued:

> Significant disparities do exist between the legal rights of the holder of a sec. 1111(b) claim and the holder of a general unsecured claim which render the two claims not substantially similar and which preclude the two from being classified together under sec. 1122(c). Thus, we cannot accept the proposition implicit in *Greystone* that separate classification of a sec. 1111(b) claim is nearly conclusive evidence of a debtor's intent to gerrymander an affirmative vote on confirmation. These disparities in rights stem from the most obvious difference between the two claims: a general unsecured claim exists in all chapters of the Code, while a sec. 1111(b) claim exists only as long as the case remains in Chapter 11 and, once converted to a Chapter 7 case, recovery is limited to its collateral. *Compare* 11 U.S.C. sec. 103(f) with 11 U.S.C. sec. 502(b)(1).
>
> * * *
>
> This legal difference between the two claims also can lead to anomalous results when

> applying other sections of the Code to a class containing both sec. 1111(b) claimants and general unsecured claimants. . . . These anomalies are all clearly set out in Judge Ginsberg's well-reasoned opinion. *In re SM 104, Ltd.*, 160 B.R. 202, 219-21 (Bankr. S.D. Fla. 1993).
>
> The drafters of the Bankruptcy [Code] did not intend these results. We find that, at least where the debtor is a partnership comprised of a fully encumbered single asset, the legal rights of a sec. 1111(b) claimant are substantially different from those of a general unsecured claimant. Accordingly, we hold that secs. 1111(b) and 1122(a) not only permit but require separate classification of . . . sec. 1111(b) unsecured deficiency claims. . . .

Id. at 319.

The reasoning adopted by the *SM 104, Ltd.* and *Woodbrook* courts makes it clear that the Code, *by its very terms*, requires separate classification of an undersecured creditor's unsecured claim in a Chapter 11. There is no

doubt that this issue, which is divisive amongst the Circuits, is also one that will not go away. Additionally, the current line-up of the Circuits, with no definitive pronouncement from this Court, will encourage single asset chapter 11 debtors to forum shop to those circuits where they will be dealt with most favorably. This is precisely the situation which 28 U.S.C. § 1254(1) is intended to address. For this reason alone, this Court should grant this petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit on the issues raised herein.

AN IMPAIRED CLASS, AS THAT TERM IS DEFINED UNDER 11 U.S.C. § 1124, INCLUDES A CLASS OF CREDITORS WHOSE INTEREST IS ENHANCED OR ALTERED IN A MANNER WHICH INCREASES THE RIGHTS OF THAT CLASS.

Separate and apart from the foregoing, the Second

Circuit erroneously declined to address this second issue by holding that residential security deposit holders were not entitled to vote on the Petitioner's Plan of Reorganization. In so holding, the Second Circuit relied on *Greystone*. This holding constituted an erroneous interpretation of the Code, and placed an unnecessary restriction thereon, because the issue surrounding the classification of residential security holders is governed not by the *Greystone* decision, but rather by the decisions of *In re Bryson Properties*, 961 F.2d 496 (4th Cir. 1992) and *In re River Village Assoc.*, 24 Bankr. 1400 (E.D. Pa. 1993).

In its Plan, Boston Post Road identified its Class 3 claim holders of security deposits to be impaired, as that term is defined under the Code, and hence able to vote on the Plan. The Respondent argued that the class was not

impaired because its legal interest was enhanced, and thus *unaltered*, by the Plan. The Code does not make this distinction.

The legal interests of the Class 3 claim holders were, in fact, altered or impaired. The Plan provided that the Class 3 claim holders will receive, as a marketing tool, and as an incentive to continue renting within the project, as well as to attract new tenants, interest on their security deposits at a rate of eight (8%) percent which is higher than the statutory rate of five and a quarter (5¼%) percent. *See* Appx. at 105-39; Conn. Gen. Stat. § 47a-21(i) (West 1994)

The Code does not limit its definition of impairment to only those claims which are somehow hindered or harmed by the plan. Section 1124 defines "impairment" as follows:

> Except as provided in Section 1123(a)(4) of this title, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan
>
> > (1) leaves *unaltered* the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest;
> >
> > * * *

11 U.S.C. § 1124(1) [emphasis added].

11 U.S.C. § 1126(f) states that a class of claims which is *un*impaired is deemed to have accepted a plan. Because all classes of claims must either accept or be unimpaired under a plan, *see* 11 U.S.C. § 1129(a)(8), unless the "cramdown" powers of 11 U.S.C. § 1129(b) are invoked, a determination of "impairment" is instrumental in examining a plan in the first instance.

During the appeal to the Second Circuit, *amicus*

curiae, Federal Home Loan Mortgage Corporation ("FHLMC"), relying on the *Greystone* decision, asserted in its brief that it was not necessary for the Court to reach this issue. The FHLMC argued that such deposit holders were not a proper class and therefore not entitled to vote in the first instance. In response, the Petitioner asserted that given the express language of 11 U.S.C. § 507(a)(6) and 11 U.S.C. § 1129(a)(9), which identify deposit holders as a class entitled to vote, that the *Greystone* decision focusing on 11 U.S.C. § 365 and § 1126(c) with respect to the treatment of security deposit holders, is inappropriate and misplaced.

Specifically, Section 507(a)(6) provides that the following "claim" has priority:

> Sixth, allowed unsecured claims of individuals, to the extent of $900 for each

> such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals that were not delivered or provided.

Similarly, Section 1129(a)(9) provides, in pertinent part, that the court shall confirm a plan only if:

> Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that --
>
> * * *
>
> (B) with respect to a claim of a kind specified in section . . . 507(a)(6) of this title, each holder of a claim of such class will receive --
>
> (i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

> (ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim. . . .

The Second Circuit declined to reach the issue of what constitutes "impairment" under the Code by concluding that under Code, unexpired leases must be assumed or rejected by the debtor, and when the debtor does neither, leases continue in effect and therefore lessees have no provable claim against bankruptcy estate and that accordingly, obligations assumed by the debtor under continued leases constitute post-petition administrative claims, which do not give their holders right to vote on plan of reorganization.

Petitioner respectfully asserts that this decision was incorrect in light of the express language contained in 11

U.S.C. § 507(a)(6) and 11 U.S.C. § 1129(a)(9). Accordingly, Class 3 was a proper impaired class which voted in favor of the Petitioner's Plan of Reorganization and therefore, the said Plan should have been confirmed by the courts below.

CONCLUSION

The order of a Writ of Certiorari should be issued in light of the conflict which has emerged from United States Courts of Appeals which have reached the issue of separate classification under Section 1111(b) of the United States Bankruptcy Code. This Supreme Court should grant the petition for certiorari to determine which analysis is correct and to resolve a growing jurisdictional disparity.

RESPECTFULLY SUBMITTED,
THE PETITIONER,
BOSTON POST ROAD LIMITED PARTNERSHIP

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